



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Notice of Decision

[1] On July 20, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 24, 2016**. The appeal concerned the decision of the Development Authority, issued on June 13, 2016, to refuse the following development:

To convert the existing Semi-detached House to 4 Dwellings of Stacked Row Housing (existing without permits).

[2] The subject property is on Plan 667KS Blk 18 Lot 10, located at 10729 - 64 Avenue NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A Development Permit Application, including the plans of the proposed Development;
- The refused Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s supporting documentation; and
- On-line submission from a surrounding property owner.

[4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – property listing

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing*i) Position of the Appellant, Mr. M. Zinger*

- [8] The Appellant advised that his relator determined that he did not have proper permits in place for the proposed development.
- [9] The Appellant purchased the property in 2005. At that time, he received full records of revenue from four suites, composed of side-by-side duplexes. There were two realtors involved and he hired a lawyer to handle the transaction and the lack of a Development Permit was missed by everyone involved.
- [10] The Appellant operated the proposed development as is until 2010 when a disgruntled tenant made a complaint with Bylaw Enforcement. He then applied for a Development Permit to convert to Stacked Row Housing. This was refused and he appealed.
- [11] In 2011, the Board allowed the appeal, which included a condition regarding the payment of a Sanitary Sewer Trunk Charge and the cost of sewer services. The Appellant made inquiries with the City about these fees because the building already existed, including sewers lines in place, so he could not understand why he was paying for something that already exists. He never heard anything back and he never followed up, so he is trying to rectify the situation now.
- [12] The Appellant advised that all the suites have been renovated and upgraded, with the roof most recently being re-shingled.
- [13] Upon questioning from the Board, the Appellant advised that, when he discovered that he still did not have proper permits in place, the City advised him that the Development Permit the Board had issued had expired and he need to start the process again.
- [14] Upon questioning from the Board, the Appellant advised there are numerous other similar developments within a six-block radius of the proposed development. Based on his observations, many of these units do not have the requisite number of parking stalls and he does not believe all of them meet the locational criteria. Further, there are 10 new duplexes currently being built nearby.

[15] The Appellant stated that when the Board approved his Development Permit in 2011, there was a condition imposed that he add an additional parking space. He currently has four spaces on the driveway and parking pad and two stalls inside the detached garage.

[16] The Appellant submitted Exhibit A, a real estate listing of a comparable development. The interior lot size is 10 metres wide by 40 metres long, for a total Site Area of 400 square metres. The Appellant's property is significantly larger.

ii) Position of the Development Officer, Joselito Angeles

[17] The Development Officer stated he refused the application because of the numerous deficiencies and size of the variances. For instance, Stacked Row Housing requires 750 square metres in Site Area so there is enough space for the building to be built and the proposed development is severely deficient. The building was originally approved as a Semi-detached House and was converted to Stacked Row Housing without permits. Even if it had been initially applied for as Stacked Row Housing, it would have been refused, because there is simply not enough space.

[18] The Board referred the Development Officer to Reason #4 of its decision from 2011 which stated, "There was no evidence provided to suggest that the development was not originally approved and/or constructed as a four unit development. Based on the evidence provided by the Appellant, the existence of four furnaces and the existing separate entrances to each dwelling appear to have been part of the original construction." The Development Officer stated that, although it may have been originally constructed as it currently exists, the POSSE records show the Development Permit issued was for a Semi-detached House. The Presiding Officer pointed out that no one appeared at the previous hearing on behalf of the Development Authority, so that panel of the Board may not have been aware of what the POSSE records showed.

[19] The Board asked the Development Officer for clarification on the expiry of the Development Permit. It was his understanding that, after a year someone from the City phoned the Appellant to request that he pay the Sanitary Sewer Trunk Charge. When the fee was not paid, the permit expired in 2011. By the time the Appellant phoned again, the Development Permit had already expired so he was asked to make a new application.

[20] The Development Officer clarified that the regulation regarding expiry of permits changed in 2015. For residential developments, applicants are allowed to complete conditions within one year. For commercial developments, the allowance is now two years. However, at the time the permit expired, the previous regulation allowed only one year to meet conditions.

[21] The Board confirmed with the Development Officer that Stacked Row Housing is now a Permitted Use whereas it was a Discretionary Use when the Board first considered this development. Further, it appears that many of the variances now required are smaller than the ones granted by the Board previously. With this in mind and the fact there are no variances required for setbacks or parking, the Board asked the Development Officer to comment on the impact this development has on the neighbours and the amenities of the

neighbourhood. The Development Officer acknowledged there are no records of any complaints, so the existing development probably does not have an impact. However, he did not want to contradict the regulations established by City Council and it is his responsibility to abide by the regulations. The hardship that exists is because the proposed development already exists. However, there is no hardship in meeting the regulations for Semi-detached Housing.

[22] The Board asked the Development Officer to explain in greater detail why the Development Permit issued by the Board was expired or cancelled. The Development Officer referred the Board to Sections 17 and 22 of the *Edmonton Zoning Bylaw*. He was not the Development Officer who made the decision to expire or cancel the permit. It was his understanding that, because the Appellant did not fulfill the Board's conditions, the Building Permit had not been issued and thus the Development Permit was no longer valid.

iii) Rebuttal of the Appellant

[23] The Appellant understands the Development Officer is following the rules, but the City can and does grant variances. The City is allowing narrower lots, multiple houses on these narrower lots, potentially allowing duplexes to be converted to four-plexes and in general encouraging infill housing. He has several long term tenants, charges reasonable rent and is overall a responsible business owner.

Decision

[24] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

- i. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Sanitary Sewer Trunk Change (SSTC) fee of \$1,340.00. This is based on 4 units of stacked row housing @\$1,118.00/unit with a credit for 2 dwellings (duplex) @\$1,566.00/dwelling. The SSTC charges are quoted at the current 2016 SSTC rates. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 5th Floor cashiers, Sustainable Development, 10250 - 101 Street NW.
- ii. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. Reference Section 51
- iii. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for

which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. Reference Section 54.1(1) (c)

[25] In granting the development the following variances to the Zoning Bylaw are allowed:

- i. The minimum Site Area of 750.00 square metres per Section 140.4(5)(a) is varied to allow a deficiency of 218.38 square metres, thereby allowing a Site Area of 531.62 square metres.
- ii. The minimum Site Width of 17.0 metres per Section 140.4(5)(b) is varied to allow a deficiency of 3.60 metres, thereby allowing a Site Width of 13.40 metres.
- iii. The Stacked Row Housing locational criteria of Section 140.4(7) are waived.
- iv. The maximum Site Coverage for a Principal Building of 28 percent (148.85 square metres in this instance) per Section 140.4(10)(f) is varied to allow an excess of 21.19 square metres, thereby allowing the Principal Building a Site Coverage of 32 percent (170.04 square metres).
- v. The maximum total Site Coverage of 40 percent (212.65 square metres in this instance) per Section 140.4(10)(f) is varied to allow an excess of 15.24 square metres, thereby allowing a total Site Coverage of 43 percent (227.89 square metres).

Reasons for Decision

[26] Stacked Row Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[27] It appears that the development was built as Stacked Row Housing in the 1970s with four dwellings, each with a furnace, laundry facilities and separate entrances to grade.

[28] The Development Permit originally issued for this Site was for Semi-detached Housing.

[29] Since at least 1993 the development has been operating in its current form with renters.

[30] In 2011, a panel of this Board allowed an appeal to convert the development to Stacked Row Housing. At that time, Stacked Row Housing was a Discretionary Use rather than a Permitted Use. The regulations were somewhat different then and even larger variances in the minimum Site Area and minimum Site Width were required. It appears the Development Permit issued by the Board at that time either expired or was cancelled because the Appellant failed to pay the Sanitary Sewer Trunk Charge required as a condition of the permit.

[31] The Appellant is back before the Board once again for a Development Permit to convert the existing building to Stacked Row Housing.

- [32] There is no record of any complaints related to this property.
- [33] The only opposition to the development was an adjacent neighbour whose primary concern was that this type of development encourages renters rather than owners. That neighbour did acknowledge that there have been no serious problems with this residence and that the present owner of the property appeared to be a decent landlord.
- [34] The Board heard evidence that a number of similar developments exist in the area, although not all of them meet the location criteria in the *Zoning Bylaw*.
- [35] Although there is a significant variance required with respect to minimum Site Area, the Board notes that there are no variances required regarding parking, Setbacks, Amenity Area or the Mature Neighbourhood Overlay regulations. This indicates that the minimum Site Area variance will not result in a development that is too large for the Site. Accordingly, the Board is of the view the variance to minimum Site Area will not have a significant impact on the amenities of the neighbourhood or on neighboring parcels of land.
- [36] Similarly, the Board is of the view the minimum Site Width variance is minor and will not have significant impact.
- [37] With respect to the variance required regarding location criteria, the Board notes that this development has been in existence for decades with no complaints from the neighbourhood.
- [38] The variances required regarding the maximum Site Coverage for the Principal building and the maximum total Site Coverage are minor (4 percent and 3 percent respectively) and the Board believes they will not have a significant impact.
- [39] For the above reasons, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Ms. K. Cherniawsky, Ms. A. Lund, Mr. I. O'Donnell

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.